IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 339 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARIA DISTRICT CO-OPERATIVE MILK PRODUCERS UNION LTD

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR JP SHAH for Petitioner

MR BB NAIK WITH MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 01/02/2000

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following questions for our opinion in relation to the assessment year, 1979-80, in the light of the facts enumerated in statement of case by the Tribunal:

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the order passed by the Income Tax Officer is according to the provisions of law and not barred by the limitation ?"

"(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that betterment charges for a sum of Rs.13,070/- paid to Anand Municipal Corporation is expenditure of capital nature ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that contribution made as per the provisions of Section 69 of the Gujarat Rajya Co-op. Societies Act is not deductible in computation of total income ?"

It was submitted that in view of the relevant proposition of law, the question No.1 regarding the limitation is not pressed by the learned counsel for the applicant.

In so far as questions Nos.2 & 3 are concerned, since it is, jointly, submitted that both the questions are covered by the earlier decisions, we do not deem it expedient to go into the minute details of facts, which are, otherwise explicit in the statement of the case.

In so far as question No.2 is concerned, our attention is invited to a decision of the Hon'ble Supreme Court rendered in Arvind Mills v. C.I.T., 197 ITR 422. After having considered the said decision and the facts and circumstances, it is clear, that question No.2 is, squarely, covered by the law laid down by the Hon'ble Apex Court. Therefore, the question No.2 is required to be decided accordingly. In the circumstances, we answer, question No.2, in affirmative, against the assessee and in favour of the Revenue.

Next, it would take us to the consideration of question No.3 which pertains to contribution made as per the provisions of Section 69 of the Gujarat Rajya Coop. Societies Act. It was, rightly, pointed out that this question is also no longer res-integra. It has been

directly and, substantially, covered by a decision recorded by us in C.I.T. v. Kaira District Coop. Milk Producers Union, 209 ITR 898. It was also a case of the same assessee. We find no justification to make a departure. We, therefore, answer question No.3 in the negative, in favour of the assessee and against the revenue.

This reference stands disposed of accordingly, with no order as to costs.

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